

Apr 03, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DREW RICHARD GOUGH,

Plaintiff,

v.

CAL BLACKHAM, LANCE ECK,

COUNSELOR MENDIOLA, JOHN

DOES 1, 2, and 3, and JANE DOES 1 and

2,

Defendants.

2:19-cv-00309-SAB

**ORDER DISMISSING FIRST
AMENDED COMPLAINT
1915(g)**

Before the Court is Plaintiff's First Amended Complaint. ECF No. 4. Plaintiff, a prisoner at the Airway Heights Corrections Center, is proceeding *pro se*. The filing fee has been paid. Defendants have not been served.

Generally, an amended complaint supersedes the original complaint and renders it without legal effect. *Lacey v. Maricopa County*, 693 F.3d 896, 927 (9th Cir. 2012). As such, "[a]ll causes of action alleged in an original complaint which are not alleged in an amended complaint are waived." *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) (citing *London v. Coopers & Lybrand*, 644 F.2d 811, 814

1 (9th Cir. 1981)), *overruled in part by Lacey*, 693 F.3d at 928 (holding any claims
2 voluntarily dismissed are considered to be waived if not repleaded). Furthermore,
3 defendants not named in an amended complaint are no longer defendants in the
4 action. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Therefore,
5 Defendants Jon Coers, Heidi Griffith, Steven Sundberg, Christopher C. Bowman,
6 and Christine Brule have been terminated from this action.

7 In his First Amended Complaint, Plaintiff seeks only declaratory and
8 injunctive relief. It is well established that the transfer of an inmate to another
9 prison while his claims are pending generally will moot any claims for injunctive
10 relief. *See Dilley v. Gunn*, 64 F.3d 1365, 1368-69 (9th Cir. 1995). The same is true
11 for claims seeking declaratory relief. *See Alvarez v. Hill*, 667 F.3d 1061, 1063-64
12 (9th Cir. 2012). Consequently, Plaintiff's transfers away from the Washington
13 Corrections Center and the Washington State Penitentiary ("WSP"), render his
14 claims for injunctive and declaratory relief regarding events that occurred there
15 moot. Plaintiff has failed to state a claim upon which relief may be granted.

16 In addition, Plaintiff's claims are time-barred. Contrary to Plaintiff's
17 assertion, the statute of limitations for § 1983 claims is governed, not by the relief
18 that is sought, but by the laws of the state in which the alleged violation occurred.
19 The United States Supreme Court has established that claims arising under 42
20 U.S.C. § 1983 are to be governed by statutes of limitations under state law. *See*
21 *Wilson v. Garcia*, 471 U.S. 261 (1985), partially superseded by statute as stated in
22 *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 377-80 (2004). In Washington,
23 the statute of limitations is three years as mandated by RCW 4.16.080(2); *See*
24 *Bagley v. CMC Real Estate Corp.*, 923 F.2d 758, 760 (9th Cir.1991).

25 The three-year period of limitations begins to run when the cause of action
26 "accrues." *Malner v. Carlson*, 128 Wn.2d 521, 529 (1996). A federal claim accrues
27 when the plaintiff knows or has reason to know of the injury which is the basis of
28 the action. *Knox v. Davis*, 260 F.3d 1009, 1013 (9th Cir. 2001). The statute of

1 limitations runs separately from each overt act alleged to have caused injury under
2 42 U.S.C. § 1983. *Gibson v. United States*, 781 F.2d 1334, 1340 (9th Cir. 1986).

3 Plaintiff has presented no grounds to equitably toll the running of the statute
4 of limitations. *See Millay v. Cam*, 135 Wash.2d 193, 955 P.2d 791, 797 (Wash.
5 1998) (en banc) (requiring “bad faith, deception, or false assurances by the
6 defendant and the exercise of diligence by the plaintiff,” for equitable tolling to
7 apply). Therefore, all claims arising more than three years before Plaintiff filed his
8 initial complaint on September 11, 2019, are **DISMISSED with prejudice** as time
9 barred.

10 Plaintiff asserts that on September 19, 2016, while housed at the WSP and
11 on a walkway outside the E-Unit on his way to a Chapel appointment, an inmate
12 assaulted him and knocked him unconscious. ECF No. 4 at 9. Plaintiff presents no
13 facts linking this assault to any of his previously expressed concerns that he would
14 be sexually assaulted in prison because of his convictions, or that he was being
15 “pressured” to provide store items to “white boys.” *Id.* at 8, 9.

16 Plaintiff specifies that he received medical treatment, including
17 transportation to a hospital for stitches and a CAT scan,¹ before he was returned to
18 the WSP and placed in the Intensive Management Unit. *Id.* at 10. Plaintiff states
19 that he asked for protective custody on October 13, 2016 but was denied. *Id.* On
20 November 1, 2016, he was transferred to the Airway Heights Corrections Center,
21 with minimum custody status. He asserts that his Mental Health Counselor
22 documented that Plaintiff was suffering from PTSD² on February 10, 2017,
23 resulting from the assault at the WSP and an earlier sexual assault at the
24 Washington Corrections Center. *Id.*

25 Liberally construing these allegations in the light most favorable to Plaintiff
26 the Court can infer no constitutional violations against the identified Defendants
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28 ¹ computed tomography (CT or CAT) scan

² Post-Traumatic Stress Disorder

1 from the facts presented. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981);
2 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Plaintiff has failed to state a
3 plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009); *Bell Atl.*
4 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

5 Plaintiff was given the opportunity to amend his claims and was unable to do
6 so, making clear that further leave to amend is futile. Therefore, the First Amended
7 Complaint is **DISMISSED** with prejudice as time-barred and for failure to state a
8 claim upon which relief may be granted under 28 U.S.C. §§ 1915(e)(2) and
9 1915A(b)(1).

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1 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who
2 brings three or more civil actions or appeals which are dismissed as frivolous or for
3 failure to state a claim will be precluded from bringing any other civil action or
4 appeal *in forma pauperis* “unless the prisoner is under imminent danger of serious
5 physical injury.” 28 U.S.C. § 1915(g). Plaintiff is advised to read the statutory
6 provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff’s complaint may
7 count as one of the three dismissals allowed by 28 U.S.C. § 1915(g) and may
8 adversely affect his ability to file future claims.

9 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
10 enter judgment, provide copies to Plaintiff at this last known address, and close the
11 file. The Clerk of Court is directed to forward a copy of this Order to the Office of
12 the Attorney General of Washington, Corrections Division. The Court certifies any
13 appeal of this dismissal would not be taken in good faith.

14 **DATED** this 3rd day of April 2020.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

20 Stanley A. Bastian
21 United States District Judge
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